

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.: 04 11337 EFH

TIFFANY MIRANDA and)
BENJAMIN MIRANDA,)
Plaintiffs)
vs.)
A.C. MOORE ARTS & CRAFTS, INC.,)
Defendant)

MOTION TO RECONSIDER
CASE DISMISSAL

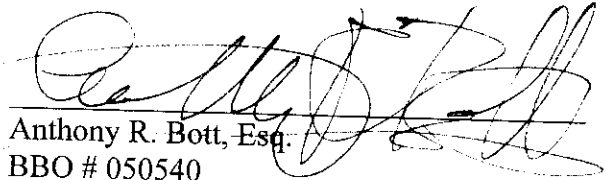
NOW COME the Plaintiffs in the above-entitled action and move that the Order dismissing this case for failure of the Plaintiffs to serve the Defendant with the Complaint within the time period required by Rule 4 of the Federal Rules of Civil Procedure be reversed because, in fact, service was timely made, but as elaborated and documented within the accompanying Affidavit of Plaintiffs' Counsel (attached hereto and incorporated herein as Exhibit A), although the Office of the Sheriff's Department of Camden County for the State of New Jersey had repeatedly assured me that said Office would immediately forward an original Summons with an original Affidavit of Service directly to this Court, it was not so tendered. Therefore this case was dismissed notwithstanding the fact that on October 7, 2004 – clearly within the 120 day period allowed by Rule 4 – the Complaint in this matter was duly served upon a Managing Agent of the Defendant in accord with the requirements of the Federal Rules of Civil Procedure.

Accordingly, it is respectfully submitted that it would work an unwarranted injustice upon the Plaintiffs to have their case dismissed upon a basis which, in truth, does not exist and which

appeared to be the circumstance only due to either an apparent misunderstanding or clerical misrepresentation by and on the part of the said Sheriff's Department Office of Camden County in the State of New Jersey.

WHEREFORE, the Plaintiffs by their Attorney respectfully request that the Order dismissing this case on October 21, 2004 be forthwith rescinded and that the Plaintiffs be afforded their due procedural and substantive rights to prosecute their case on the merits pursuant to the Complaint filed.

Respectfully submitted by and on behalf of
the Plaintiffs,
By their Counsel,



Anthony R. Bott, Esq.

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Dated: November 2, 2004